

IN THE  
Supreme Court of the United States

October Term, 1942.

No. 604

S. H. SQUIRE, as Superintendent of Banks of the State of  
Ohio, in charge of the liquidation of the business and  
property of The Union Trust Company,

*Petitioner,*

*vs.*

CLIFFE U. MERRIAM,

*Respondent.*

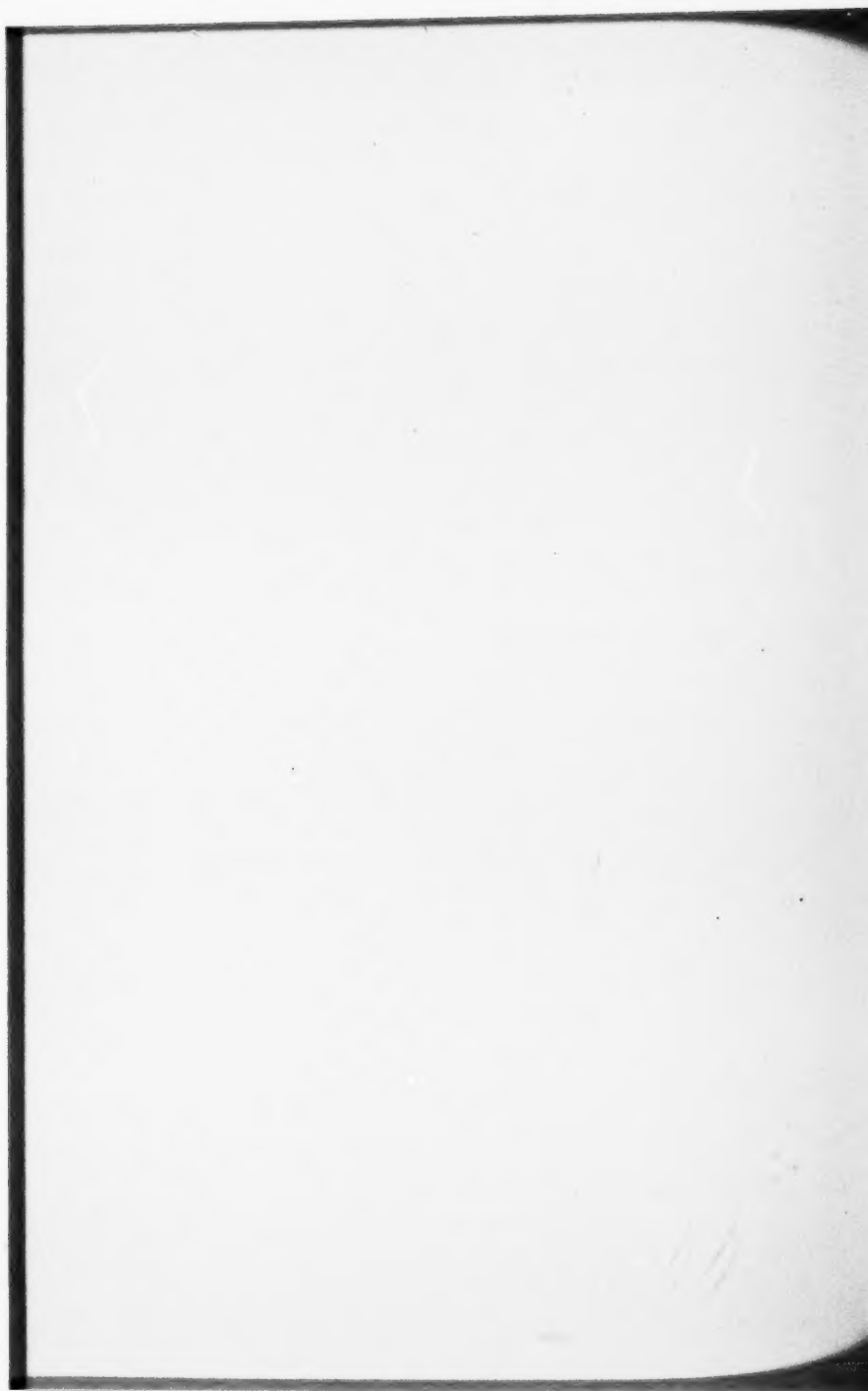
Petition for Writ of Certiorari to the Supreme Court  
of the State of California, and Brief in Support  
Thereof.

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S. H. SQUIRE, as Superintendent of Banks of the State of  
Ohio, in charge of the liquidation of the business and  
property of The Union Trust Company,

*Petitioner,*

*vs.*

CLIFFE U. MERRIAM,

*Respondent.*

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Petition for Writ of Certiorari to the Supreme Court  
of the State of California.

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*To the Honorable Chief Justice and Associate-Justices of  
the Supreme Court of the United States:*

The Superintendent of Banks of the State of Ohio respectfully petitions that a writ of certiorari issue to review the final judgment of the Supreme Court of the State of California in that certain cause entitled "S. H. Squire, as Superintendent of Banks of the State of Ohio, in charge of the liquidation of the business and property of The Union Trust Company, *Plaintiff and Respondent*, *vs.* Cliffe U. Merriam, *Defendant and Appellant*," and numbered "L. A. No. 18304" on the records of said state court.

**A. The Opinions of the Courts Below.**

The opinion of the California Supreme Court in this cause was filed October 2, 1942, and is reported at 21 Adv. Cal. 59, 129 P. (2d) 698; it is also set forth at R. 85-87. The opinion in the companion case is reported at 21 Adv. Cal. 46, 129 P. (2d) 691, and is set forth at R. 72-85.

The California Supreme Court, with two of the justices dissenting [R. 87, 79-85], reversed the judgment of the Superior Court for Los Angeles County in favor of the petitioner here, the plaintiff below. The trial court's opinion is not reported, but its judgment appears at R. 36-37.

The hearing in the state supreme court followed an appeal by the defendant below, the respondent here, to the District Court of Appeal [R. 38-39]. The opinion of that intermediate appellate court, which also reversed the judgment of the trial court, was filed January 15, 1942. Since the case was later transferred to the California Supreme Court for hearing and determination, this opinion is not officially reported. However, it is unofficially reported at 49 Adv. Cal. App. 223, 121 P. (2d) 537; it is also set forth at R. 67, 60-66.

**B. Summary Statement of the Matter Involved.**

This is an action against a California stockholder of The Union Trust Company of Cleveland, Ohio, to recover upon a double liability assessment levied against stockholders by the Ohio Superintendent of Banks as statutory liquidator. The facts are stipulated [R. 25, 39-56]. The Union Trust Company was a state bank organized under the banking laws of Ohio [R. 26, 40]. The outstanding capital stock consisted of 914,000 shares of \$25 par value [R. 29, 44]. The respondent, Cliffe U. Merriam, was at

all times material here the owner and holder of 1652 shares [R. 31, 45].

On February 27, 1933, The Union Trust Company was unable to meet its obligations in the regular course of business and declined to permit the withdrawal of more than five per cent of any deposit [R. 26, 41, 49]. The bank thereafter continued to operate upon this restricted basis by direction of the Superintendent of Banks [R. 27, 42, 52]. On April 8, 1933, the Superintendent of Banks appointed a conservator "for the purpose of conserving its business and assets pending further disposition thereof as provided by law" [R. 28, 42, 53].

On June 15, 1933, the Superintendent of Banks determined that The Union Trust Company was in an unsound condition to transact a banking business and thereupon took possession for the purpose of liquidation [R. 28, 43].

On July 30, 1934—following various investigations, audits, accountings and evaluations—the superintendent found that the bank's liabilities exceeded its assets to the extent of more than \$25,000,000 [R. 29, 43]. The aggregate par value of the outstanding capital stock of The Union Trust Company amounted to \$22,850,000 [R. 29, 44]. Accordingly, the superintendent thereupon determined, by reason of the deficiency, that it was necessary to assess the individual liability of the stockholders at one hundred per cent of the par value of the shares [R. 30, 44, 54].

Thereafter and on July 30, 1934, the Ohio Superintendent of Banks levied an assessment of one hundred per cent against all stockholders of The Union Trust Company [R. 30, 44, 54]. On August 1, 1934, the superintendent caused notice of the assessment to be mailed to all stock-

holders, requesting payment on or before November 1, 1934 [R. 31, 45].

On June 15, 1936, Merriam had failed to pay the assessment and was residing in California. On that date, the Ohio Superintendent of Banks commenced this action upon the assessment by filing his complaint in the Superior Court for Los Angeles County. (Although the complaint actually was not filed until July 28, 1937 [R. 47], Merriam stipulated, in consideration of the petitioner's withholding suit, that any action thereafter brought to recover the assessment would be deemed brought on June 15, 1936.) [R. 4, 6, 32, 47.]

Merriam answered [R. 7, 18-19], setting up as an affirmative defense the contention that enforcement of the assessment in California was precluded by the provisions of Section 359 of the California Code of Civil Procedure, which provides that "such actions must be brought within three years after . . . the liability was created."

The trial court rendered judgment against Merriam for the full amount of the assessment [R. 32, 34, 37]. Merriam then appealed to the District Court of Appeal [R. 39].

That court reversed the judgment [R. 60]. Thereafter, upon petition of the Ohio Superintendent of Banks, the California Supreme Court ordered the cause transferred there and likewise reversed the judgment of the trial court [R. 71, 72].

Because the California Supreme Court refused to give full faith and credit to the Ohio assessment, and denied to the Ohio Superintendent of Banks privileges and immunities accorded the California Superintendent of Banks on parallel facts, the Ohio Superintendent seeks review in this Honorable Court.

